

PATENT
Customer No. 22,852
Attorney Docket No. 05725.1266

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Valérie DE LA POTERIE)	Group Art Unit: 1615
Application No. 10/821,919)	Examiner: Venkat, Jyothsna A.
Filed: April 12, 2004)	
For: COSMETIC COMPOSITION)	Confirmation No. 2430
HAVING A CERTAIN THERMAL)	
PROFILE)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, Nathalie Jager Lezer, do hereby make the following declaration:

1. I am a French citizen, residing at 19, Allée des Petits-Champs,
91370 VERRIERES-LE-BUISSON, FRANCE.

2. I have been awarded Ph.D. (enter degree) by
Faculté de Pharmacie Paris VI (enter educational institution).

3. I have been employed by L'ORÉAL since 1998 (enter year) and
currently hold the position of SENIOR MANAGER (enter position).

4. I understand the rejections made in the Final Office Action mailed
August 11, 2008, in Application No. 10/821,919.

5. Given my education and experience, particularly in the area of cosmetics, I consider myself able to provide the following testimony based on experiments conducted by me or under my supervision:

I. TEST COMPOSITIONS

6. Two compositions were prepared consistent with Example 29 of U.S. Patent No. 3,911,105 ("the '105 patent"). No example of the '105 patent discloses the use of Applicant's elected homopolymer, polystearyl acrylate. Some examples of the '105 patent disclose the use of polystearyl methacrylate, and those examples were considered. Example 29 is the only example in the '105 patent that is directed to a mascara and which may use polystearyl methacrylate. Specifically, Example 29 includes Fatty Composition P, which contains 15g of the homopolymer of Example 1 of the '105 patent. However, the homopolymer of Example 1 "can advantageously be replaced by the same quantity of one of the homopolymers prepared according to Examples 8, 9, and 11." See '105 patent, col. 14, lines 29-40. Example 8 of the '105 patent discloses the use of polystearyl methacrylate as its homopolymer. See id., col. 7, Table A. Thus, two compositions based on Example 29 of the '105 patent were prepared (Composition A and Composition B).

7. Composition A and Composition B were identical except for the homopolymers used. See Table I below.

TABLE I

Composition A	
	Amount (g)
Beeswax	24.4
lanolin alcohol	4.9
acetylated lanolin	3.9
polyvinyl laurate (Mexomère PP from Chimex)	5.8
isoparaffin	56.8
iron oxides	4
methyl paraben	0.2
Total	100

Composition B	
	Amount (g)
Beeswax	24.4
lanolin alcohol	4.9
acetylated lanolin	3.9
polystearyl acrylate - dimethicone methacrylate copolymer (KP 561 P from Shin Etsu)	5.8
isoparaffin	56.8
iron oxides	4
methyl paraben	0.2
Total	100

8. Fatty Composition P of the '105 patent contains the "Homopolymer of Example 1," which is polyvinyl stearate. Id., col. 6, line 10, and col. 14, line 35. However, polyvinyl stearate was not available at the time of the testing. I deemed polyvinyl laurate to be the next closest alternative, so for Composition A, the homopolymer polyvinyl laurate was used instead. Composition A contained all the other components as Example 29, and all components were present in the same proportions

as in Example 29.

9. Composition B included a polystearyl acrylate - dimethicone methacrylate copolymer, in order to represent the use of a crosslinked polymer. Composition B contained all the other components as in Example 29, and in the same proportions as in Example 29.

II. HEAT STABILITY

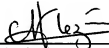
10. Compositions A and B were evaluated for heat stability, using the method described in Applicant's specification at page 3, lines 7-15. Specifically, the term "heat-stable" denotes a composition with a viscosity that varies by no more than 25%, after being subjected to a succession of X number of cycles of melting/cooling according to the following protocol: the composition is placed in an oven at 80°C. for 2 hours. The composition is then allowed to return naturally to room temperature. An interval of 24 hours is left between 2 successive cycles, and the viscosity after performing the X number of cycles is measured. The viscosity measured after performing the X number of melting/cooling cycles is compared with that measured before the first cycle.

11. Thus, the heat stability of Applicant's Compositions A and B, which are based on Example 29 of the '105 patent, were evaluated by placing the compositions in an oven at 80°C for 2 hours. However, both Compositions A and B decomposed during the first heating cycle to the point where the viscosities could not be determined, and therefore were **not** heat stable.

12. Based on this testing, it is clear that the compositions disclosed in the '105 patent do not inherently disclose cosmetic compositions that are heat stable, as determined by the method disclosed in Applicant's specification at page 3, lines 7-15.

13. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 13 | 03 | 2009

By: 
Nathalie Jager Lezer